

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

WILLIAM F. DAVIS, III,)
)
Plaintiff,)
)
v.) Civ. No. 04-209-SLR
)
FIRST CORRECTIONAL MEDICAL,)
)
Defendant.)

O R D E R

At Wilmington this 14th day of March, 2006, having reviewed plaintiff's motion for injunctive relief and to amend;

IT IS ORDERED that said motion (D.I. 23) is granted in part and denied in part for the reasons that follow:

1. By his motion, plaintiff seeks entry of an injunction against Warden Williams and his staff for "possible retaliation and harassment for [plaintiff having filed] two lawsuits against them" and "asking the [court] to transfer plaintiff to S.C.I.G., (State Correctional Institution at Georgetown) so that [he] can complete doing his time in peace." (D.I. 23) Because plaintiff failed to provide the necessary U.S. Marshal forms to serve Warden Williams in accordance with an earlier order, the court dismissed Williams from the case on August 23, 2005. (D.I. 27)

2. In his motion to amend, plaintiff seeks to add as defendants Dr. Robinson and Nurse Betty to the claims asserted

against defendant First Correctional Medical ("FCM").¹ (D.I. 23)

3. While leave to amend should be "freely given," a court may deny a motion to amend if it is clear from the record that: (1) the movant has demonstrated undue delay, bad faith or dilatory motives; (2) amendment would be futile; and (3) amendment could prejudice the other party. Hill v. City of Scranton, 411 F.3d 118, 134 (3d Cir. 2005).

4. Considering plaintiff's motion against the factors outlined above, the court finds amendment is warranted.²

5. Pursuant to Fed. R. Civ. P. 4(c)(2) and (d)(2), plaintiff shall submit to the court **within thirty (30) days** an **original** United States Marshal-285 form for each of the newly added defendants, Dr. Robinson and Nurse Betty. **Failure to submit the forms may provide grounds for dismissal of these defendants from this action pursuant to Fed. R. Civ. P. 4(m).**

6. Upon receipt of the completed United States Marshal-285 forms, the United States Marshal shall serve a copy of the signed complaint, all subsequent documents (D.I. 2-37) and this order upon defendants as directed by plaintiff. All costs

¹Defendant FCM moved to dismiss on November 1, 2005 and March 3, 2006. (D.I. 30, 37)

²Defendant FCM's motions to dismiss are based, in part, on plaintiff's failure to identify the particular parties involved in the allegedly wrongful conduct. Plaintiff's amended complaint addresses this issue.

of service shall be advanced by the United States.

7. Defendant's motions to dismiss (D.I. 30, 37) are denied without prejudice to renew after the newly added defendants have entered an appearance or otherwise answered the complaint.

Jane L. Robman
United States District Judge